40 S.B. CIVIL WRIT PETITION NO.6923/2007

(Smt. Shanti Maru Vs. State of Raj. & Ors.)

Date of Order :: 5th November 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar for the petitioner

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BY THE COURT:

The petitioner working on the post of teacher Grade III having been transferred from Government Upper Primary School Gurudwara, Rani Bazar, Bikaner to Government Upper Primary School Gangapura, Kolayat earlier submitted a writ petition to this Court being SBCWP No.6216/2007 that was withdrawn on 01.10.2007 with liberty to avail of the alternative remedy and to take proceedings in accordance with law. However, it seems that the petitioner even before filing of the writ petition had already filed an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur on 06.09.2007 being appeal No.1784/2007; the Tribunal considered the appeal filed by the petitioner along with other cognate matters and decided the same by a common order dated 01.10.2007 (Annex.8). The Tribunal has rejected the submissions of the appellant that the transfer order was unauthorized or improper for having been made without the petitioner applying for the same. Aggrieved against the order dated 01.10.2007 the

petitioner has preferred this writ petition.

It has been contended on behalf of the petitioner that the transfer order has been made in this case only in order to accommodate one Smt. Rekha Rani (respondent No.5) who had been transferred on her request; that the respondents have framed their transfer policy and have provided, inter alia, that if dependent of a teacher is suffering from serious/incurable disease, the incumbent may be given posting at the desired place; that notwithstanding such clear provision, the petitioner has been transferred to a distant place though her husband is a heart patient and has undergone bye-pass surgery from Escorts Hospital; that due to the transfer to a far off place, the petitioner would not be able to take care of her husband and the transfer order in her relation deserves to be set aside on this ground alone; that the respondents have acted discriminately inasmuch as they have issued another order dated 07.09.2007 in relation to one Smt. Rekha Makkar allowing her to work at Bikaner only for the reason that her husband is a heart patient whereas the case of the petitioner has not been considered on the same footings; that the Tribunal has cursorily rejected the appeal of the petitioner without considering the grounds urged by the petitioner. It may be pointed out that the petitioner has made an averment in the writ petition that she did make a representation pointing out

the fact about ailment of her husband and has placed a copy of the representation on record as Annex.5. During the course of submissions in this petition earlier, while learned counsel for the petitioner made the submissions that the Tribunal has not considered the contentions in relation to the representation made by the petitioner, upon the query of the Court, learned counsel placed on record, on 26.10.2007, a copy of memo of appeal filed before the Tribunal. With reference to the said copy of memo of appeal learned counsel submitted that the submissions made in paragraph No.5 of the memo of appeal have not been taken into consideration by the Tribunal. Learned counsel also attempted to submit that the petitioner is on the verge of retirement and urged that the transfer order in her relation deserves to be set aside on this ground also.

Having heard the learned counsel for the petitioner and having perused the material placed on record, this Court is clearly of the opinion that this writ petition does not merit admission.

Essentially the case of the petitioner is that her husband is suffering from incurable disease and is in need of regular attendance and the transfer policy of the respondent provides for posting of the incumbent on the desired place in case of the spouse or dependent children suffering from serious/incurable disease and, therefore, transfer of the

petitioner from Bikaner to Kolayat is in violation of the transfer policy. The petitioner has suggested in the writ petition that she made a representation in that regard to the authorities and has placed a copy of the alleged representation as Annexure 5. However, it is noticed that the petitioner has not stated any date of making of such representation and the document (Annex.5) does not carry any date either. There is no proof available on record to find that the said representation had in fact been delivered to the authorities concerned. It is further noticed that though the petitioner has stated about violation of transfer policy with reference to the ailment of her husband in paragraph 5 of memo appeal but then never urged the ground before the Tribunal that she did make a representation and the same was not considered by the authorities. It appears that such a ground was not even put forth before the Tribunal while making oral submissions. In the facts and circumstances of the case, the Tribunal cannot be said to have committed any error in not considering a ground that was never made the basis of submissions in appeal nor was urged. This Court is clearly of opinion that in a writ of certiorari of the present nature, the petitioner cannot be permitted to expand on the grounds of challenge to an administrative order when such ground has not been put forward before the concerned appellate authority.

In the fact situation of the present case, this Court is constraint to observe that in relation to the difficulties as sought to be stated, nothing prevented the petitioner from making a proper representation and requesting the authorities to take appropriate decision in that regard. These observations are being made particularly for the reason that there is nothing on record to find that the representation as placed before this Court as Annexure 5 was ever made by the petitioner to the authorities. So far the submissions regarding the petitioner being on the verge of retirement are concerned, again it is found that no such ground was suggested before the Tribunal for challenging the order impugned nor the said ground carries any substance. The petitioner has failed to show if there was any violation of any statutory requirement while effecting her transfer order.

It is further noticed that the transfer order has already been effected inasmuch as the petitioner has already been relieved in pursuance of the transfer order on 18.09.2007 (Vide Annex.6).

In the over all facts and circumstances of the case there appears no reason or cause to take up the matter in extra-ordinary writ jurisdiction of this court. The writ petition fails and is, therefore, rejected.

However, it is made clear that notwithstanding what has

been observed above, it shall still be permissible for the petitioner to make, if not already made, and to pursue, her representation with the authorities concerned, stating her grievances and to request the authorities to take a decision on the said representation.

(DINESH MAHESHWARI), J.

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